

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 918 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MANGALDAS JAISHANKAR UPADHYA

Versus

MUNNA CHOTALAL GADALIYA

Appearance:

MR SK PATEL for Petitioners
None present for Respondent Nos. 1 & 2
MR YN RAVANI for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/02/2000

ORAL JUDGEMENT

#. The petitioners-claimants in the Motor Accident
Claims Petition 705 of 1988 before the Motor Accident
Claims Tribunal, Himatnagar, challenges by this revision

application, the order of the Tribunal dated 19/1/1991 below Exh.1 whereunder the Motor Accident Claims Petition was came to be dismissed against the respondents. This order reads as under :-

"The notice was issued against the opponent Nos.

1 and 2 but it has returned un-served. Thereafter neither the claimants nor their advocate has made any attempt paying before the Court to issue fresh process. As period of more than one month has elapsed and hence the claim petition is dismissed under Order 9 Rule 5 C.P.C. against the opponent No.1 and 2 .

The opponent No.3 is shown as insurance company of the vehicle involved in the accident. As the claim against the owner is dismissed it cannot proceed against the insurance company and hence the claim petition is dismissed against the opponent No.3, with no order as to costs"

#. The learned counsel for the petitioner contended that the Tribunal has committed a serious and material irregularity in exercise of its jurisdiction in rejecting the claim application. The respondent Nos. 1 and 2 are residing in the state of Uttar Pradesh and despite of making all efforts the summons were returned unserved. It is a case of the claimant for the compensation arises from a motor vehicle accident. The tribunal should have taken a justice oriented approach rather than to dismiss this claim petition under Order 9 Rule 5 of the Code of Civil Procedure. The applicant should have been given last opportunity to get the summons served upon the respondent Nos. 1 and 2 through substitute service i.e. by publication of the same in the newspaper.

#. The Insurance Company has been duly served with the summons. The petition was dismissed against it on the ground that the summons of the respondent Nos. 1 and 2 returned unserved.

#. Shri Ravani, learned counsel for the respondent No.3 has not strongly opposed this civil revision application,

#. The learned Tribunal has not considered that the respondent Nos. 1 and 2 are residing in the state of Uttar Pradesh and by ordinary process it would have been difficult for the claimants to get the summons of the petition served upon them. It is not the case where the petitioners have not made efforts to get the summons

served upon the respondent Nos. 1 and 2. Instead of dismissing this claim application in the manner and fashion in which it is done by the Tribunal in this case the opportunity should have been given to the petitioner to get the summons of the petition served upon the respondent Nos. 1 and 2 by publication of same in the newspaper of wide circulation and of the regional language in the area in which the respondent Nos. 1 and 2 are residing or carrying on their business. This has not been done in the present case.

#. I find sufficient merits in the contentions of the learned counsel for the petitioners that the Tribunal has not proceeded in the matter with justice oriented approach. The learned Tribunal has certainly committed material irregularity in exercise of its jurisdiction in the matter and the order impugned in this revision application cannot be allowed to stand. If the order of the tribunal is allowed to stand it will occasion a failure of justice to the petitioner as well as will cause serious prejudice to them.

#. As a result of the aforesaid discussion the Special Civil Application succeeds and the order dated 19/1/1991 below Exh.1 in M.A.C.P. No.705 of 1988 is quashed and set aside. The Tribunal is directed to restore the M.A.C.P. to its original number and get the summons of the respondent Nos. 1 and 2 served through the publication of same in the newspaper of the area concerned having wide circulation of regional language where the respondent Nos. 1 and 2 are residing or carrying on their business. The rule is made absolute with no order as to costs.

(S.K.Keshote, J.)

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